

## MEETING MINUTES, BOARD OF ZONING APPEALS, OCTOBER 23, 2006

**Present:** Phil Tinkle, Mike Campbell, Shan Rutherford, Raynel Berry, Asst. City Attorney; Ed Ferguson, Planning Director; William Peeples, Senior Planner; and Janice Nix, Recording Secretary

The meeting was called to order at 6:00 p.m. by Phil Tinkle, Chairman.

### PREVIOUS MINUTES

October 9<sup>th</sup> – Rutherford moved to approve the minutes, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

### FINDINGS OF FACT

**V2006-012 – Dimensional Variance** – 20 E. 700N – Campbell moved that in consideration of the statutory criteria that the Board adopt the written Findings of Fact, incorporating the staff report and the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2006-012, seconded by Rutherford. Vote for **approval** was unanimous, 3-0. **Motion carried.**

### NEW BUSINESS

**Docket V2006-013 – Use Variance** – 516 N. Madison Ave. – request to allow addition of attached garage for business use and to allow improvement of area above garage to be used as living space – 0.869 acres zoned B-1 Business – Persinger Roofing, applicant; Brian Persinger, owner; Van Valer Law Firm, representing.

Tom Vander Luitengaren, Attorney; Brian Persinger, Petitioner; and members of the audience were sworn.

A waiver is needed for the Southside Challenger newspaper notice. It was only 13 days prior, rather than the required 15 days. Rutherford moved to waive the notice to allow the 13 days, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

The subject property is located at 516 N. Madison and is zoned B-1 Business. There currently exists a roofing business with a second floor apartment. The variance request is to enlarge the existing non-conforming use (roofing business in a B-1 zone) by adding a 3 car attached garage w/additional living space above the addition.

The statutory criteria was addressed as follows:

- Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community. **Answer:** The property has existed as a contracting business on the ground floor and a single family apartment on the second floor since before the adoption of the Zoning Ordinance. The use for which this variance is being requested is the same as the current use occurring on the subject property and there has never been a complaint that this use injures the public health, safety, morals and general welfare. To the contrary, since the owner plans to improve the exterior of the building to make its appearance more presentable to the community, the approving this variance request will improve the public health, safety, morals and general welfare of the community.
- Criteria:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. **Answer:** The existing facilities have been used in the exact same manner since before the adoption of the Zoning Ordinance. There has never been any complaint that the current use of the real estate has, nor would the continuance of such a use, affect the adjacent area in a substantially adverse manner. In fact, it is consistent with the adjacent uses up and down Madison Avenue which include B-1 and C-1 zoning classifications. Furthermore, there is substantial buffering in the

form of mature trees between the subject property and the neighborhood behind the B-1 and C-1 zoning classifications up and down Madison Avenue. The buffering obstructs the view and minimizes any noise associated with the coming and going of vehicles.

3. **Criteria:** The need for the Variance arises from some condition peculiar to the property involved. **Answer:** The condition creating the difficulty is, in this situation, the long term existence of the structures and facilities that are, and have been, used for a contracting business and single apartment. The current use of the property is compatible with the surrounding uses up and down Madison Avenue, and a change in its use is prevented by the high cost associated with demolition and restoration.
4. **Criteria:** The strict application of the terms of the Zoning Ordinance will constitute an unusual and unnecessary hardship if applied to the property for which the variance is sought. **Answer:** The long term existence of the structures within the facilities and the current use creates a situation in which the use pursuant to the existing zoning classification is just not feasible due to the high cost associated with demolition and restoration. A previous owner transformed the property into a contracting business and apartment residence a long time ago.
5. **Criteria:** The approval does not interfere substantially with the Comprehensive Plan. **Answer:** Approving this variance request will substantially advance the Comprehensive Plan's stated goals and objectives.

Betty Hoffa, 413 Beech Park Drive, Grwd, came forward first. Feels the property has lost it's nature area to commercial use. Machines are running early in the morning and late at night. Robin Marlow, 417 Beech Park Drive, Grwd, spoke next. He feels having the roofing company next to him has lowered his property value. The property as it exists is an "eyesore". He would like to see a fence installed between the properties at this time. Matt Freeze, 413 Beech Park Drive, Grwd, is also concerned about the property's condition as it exists. He is concerned about what the improvements that are being proposed will look like. Julie Anderson, 417 Beech Park Dr., Grwd spoke. She concurred with what other remonstrators have already spoken about. Miranda Shields came forward. She often visits Betty Hoffa and Matt Freeze and she has personally witnessed the items discussed here this evening.

Vander Luitengaren then came forward for rebuttal. He reiterated that Mr. Persinger is intending to improve the property by installing landscaping along with the proposed addition to the building.

Campbell inquired if Mr. Persinger currently lives in the apartment on the property. Vander Luitengaren stated yes, he does.

Tinkle asked if there was any plan that could be presented to show what improvements will be made to the existing building. Mr. Persinger came forward and stated he would replace the windows, new siding, roof, gutters and soffits.

Campbell asked about the elimination of outside storage if the addition is constructed. Persinger concurred that this would be the case.

Tinkle pointed out that Mr. Persinger had not made an attempt to improve or buffer the property as it exists. Would have liked to see a plan as to what improvements would be made. Stat. #2 is not really met.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.**

Rutherford moved that based on the evidence presented that the Board **approve** the granting of a dimensional variance to allow addition of attached garage for business use and to allow improvement of area above garage to be used as living space, in that the approval:

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report; and
- C. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property, per the reasons cited in the Staff Report.

With the following conditions:

seconded by . Vote for **approval** was unanimous, -0. **Motion carried.**

moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2006-013, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded . Vote for **approval** was unanimous, 3-0. **Motion carried.**

#### **ANNOUNCEMENTS/REPORTS**

Rutherford moved to adjourn, seconded by Campbell. Vote for **approval** was unanimous, 3-0. **Motion carried.** Meeting was adjourned 6:55 p.m.

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JANICE NIX  
Recording Secretary

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PHIL TINKLE  
Chairman